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19
20 **UNITED STATES DISTRICT COURT**
21 **DISTRICT OF NEVADA**

22 ABSOLUTE BUSINESS SOLUTIONS, INC.,
23 a Delaware Corporation,

24 Case No.: 2:15-cv-01325-RCJ-NJK

25 Plaintiff,

26 **FEDERAL NATIONAL MORTGAGE**
27 **ASSOCIATION'S AND FEDERAL**
28 **HOUSING FINANCE AGENCY'S**
1 **JOINT MOTION TO SUBSTITUTE**
2 **AND JOIN AS COUNTER-**
3 **DEFENDANT JOEL A. STOKES AND**
4 **SANDRA F. STOKES AS TRUSTEES**
5 **OF THE JIMIJACK IRREVOCABLE**
6 **TRUST, PURSUANT TO FED. R. CIV.**
7 **P. 25(c)**

8 MORTGAGE ELECTRONIC REGISTRATION
9 SYSTEM, an Illinois Corporation; BANK OF
10 AMERICA, N.A., AS SUCCESSOR BY
11 MERGER TO BAC HOME LOANS
12 SERVICING, LP, a Texas Corporation; IRMA
13 MENDEZ, an individual; FEDERAL
14 NATIONAL MORTGAGE ASSOCIATION, a
15 government sponsored enterprise; DOES 1
16 through 25 inclusive; and ROE
17 CORPORATIONS, 1 through X, inclusive,

18 Defendants.

1 ALESSI & KOENIG, LLC, a Nevada Limited
2 Liability Company,

3 Plaintiff in Intervention,

4 vs.

5 IRMA MENDEZ, an Individual; JAMES M.
6 McCORD, an Individual; BANK OF
7 AMERICA, N.A., AS SUCCESSOR BY
8 MERGER TO BAC HOME LOANS
9 SERVICING, LP, FKA COUNTRYWIDE
10 HOME LOANS SERVICING, LP, a national
11 banking association; CROSSBOX, an unknown
12 entity; FEDERAL NATIONAL MORTGAGE
13 ASSOCIATION, a government sponsored
14 enterprise; DOE INDIVIDUALS I through X,
15 inclusive; and ROE CORPORATIONS, I
16 through X, inclusive,

17 Defendants in Intervention.

18 and

19 FEDERAL HOUSING FINANCE AGENCY, as
20 Conservator or Federal National Mortgage
21 Association,

22 Intervenor.

23 FEDERAL NATIONAL MORTGAGE
24 ASSOCIATION; and FEDERAL HOUSING
25 FINANCE AGENCY, as Conservator of Federal
26 National Mortgage Association,

27 Counterclaimants,

28 vs.

29 ABSOLUTE BUSINESS SOLUTIONS, INC.,

30 Counter-Defendant.

31 Intervenor Defendant/Defendant-in-Intervention/Counterclaimant, Federal National
32 Mortgage Association (“Fannie Mae”), by and through its counsel of record, Dana Jonathon
33 Nitz, Esq., and Christina V. Miller, Esq., of the law firm Wright, Finlay & Zak, LLP and
34 Intervenor Defendant/Counterclaimant, Federal Housing Finance Agency (“FHFA”), by and

1 through its counsel of record, Leslie Bryan Hart, Esq. and John D. Tennert, Esq., of the law firm
2 Fennemore Craig, P.C., jointly submits this Motion to Substitute and Join as Counter-Defendant
3 Joel A. Stokes and Sandra F. Stokes as Trustees of the Jimijack Irrevocable Trust, Pursuant to
4 Fed. R. Civ. P. 25(c) (“Motion”), in order to substitute, in part, and join, in part, the current
5 record owner of the subject property, Joel A. Stokes and Sandra F. Stokes as Trustees of the
6 Jimijack Irrevocable Trust (collectively referred to herein as “Jimijack Trust”).

MEMORANDUM OF POINTS AND AUTHORITIES

8 | I. INTRODUCTION

9 FHFA and Fannie Mae seek relief from this Court to substitute Jimijack Trust in place
10 and stead of Plaintiff Absolute Business Solutions, Inc. (“ABS”) with respect to the Quiet Title
11 and Declaratory Relief causes of action alleged in Fannie Mae’s Answer and Counterclaim [ECF
12 No. 9] and the Quiet Title, Declaratory Relief and Preliminary Injunction causes of action
13 alleged in FHFA’s Answer and Counterclaim [ECF No. 18], and (ii) to join Jimijack Trust as a
14 Counter-Defendant with respect to Fannie Mae’s Counterclaim for Unjust Enrichment [ECF
15 No.9]. Jimijack Trust is the current owner of record of the subject property, and, consequently,
16 any quiet title judgment in this action should be entered against the current record owner.

This case involves the validity of a homeowner’s association foreclosure sale on February 26, 2014 (the “HOA Sale”) against the real property commonly described as 3416 Casa Alto Ave., Las Vegas, Nevada 89031 and designated by APN: 124-29-314-081 (“Property”). ABS is the third-party entity that purchased the Property as at the HOA Sale. ABS filed the instant action seeking to quiet title in its favor. As discussed in further detail below, since litigation commenced, ownership of the Property has allegedly been transferred to Jimijack Trust. As such, Jimijack Trust is the proper party-in-interest to the pending litigation and should be substituted in place and stead of ABS as to Fannie Mae’s Counterclaims for Quiet Title and Declaratory Relief and FHFA’s Counterclaims for Quiet Title, Declaratory Relief and Preliminary Injunction. Further, because Jimijack Trust enjoys the benefits of funds and resources expended to preserve the Property by Fannie Mae’s loan servicer, Seterus, Inc. (“Seterus”), Jimijack Trust is also a proper party-in-interest in relation to Fannie Mae’s

1 counterclaim for Unjust Enrichment and Fannie Mae respectfully requests that the Court join
2 Jimijack Trust as a Counter-Defendant to that cause of action. Fannie Mae and FHFA
3 respectfully request that the case caption is then amended accordingly.

4 **STATEMENT OF FACTS**

5 ***a. The Mendez Loan***

6 Fannie Mae is the current beneficiary of record under the Deed of Trust signed by Irma
7 Mendez (hereinafter “Mendez”), recorded on April 8, 2005 (hereinafter, the “Deed of Trust”),
8 and which encumbers the Property and secures repayment of a promissory note.

9 The Deed of Trust executed by Mendez identified KH Financial L.P. as the Lender,
10 Equity Title of Nevada as the Trustee, Mortgage Electronic Registration Systems, Inc.
11 (“MERS”) as beneficiary acting solely as a nominee for Lender and Lender’s successors and
12 assigns, and secured a loan in the amount of \$252,792.00 (hereinafter the “Mendez Loan”).¹ On
13 October 22, 2009, a Corporation Assignment of Deed of Trust to BAC Home Loans Servicing,
14 LP FKA Countrywide Home Loans Servicing LP (“BANA”) was recorded against the
15 Property.² On November 13, 2014, a Corporate Assignment of Deed of Trust to Fannie Mae
16 was recorded against the Property.³

17 ***b. The Foreclosure Sale***

18 Public records show that on March 13, 2013, a Notice of Delinquent Assessment (Lien)
19 was recorded against the Property by Alessi & Koenig, LLC (the “HOA Trustee”) on behalf of
20 the Fiesta Del Norte Homeowners Association (the “HOA”).⁴ Public records show that a
21 Notice of Default and Election to Sell Under Homeowners Association Lien was recorded

22 ¹ A true and correct copy of the Deed of Trust recorded with the Clark County Recorder’s
23 Office as Book and Instrument Numbers 20050408-0004993 is attached to ECF No. 9 as
24 Exhibit B. All other recordings stated hereafter are recorded in the same manner. This Court
25 may take judicial notice of publicly recorded documents. FRE 201(b); United States v. Howard,
381 F.3d 873, 876n.1 (9th Cir. 2004).

26 ² A true and correct copy of the Corporate Assignment of Deed of Trust recorded as Book and
Instrument Number 20091022-0000409, is attached to ECF No. 9 as Exhibit C.

27 ³ A true and correct copy of the Corporate Assignment of Deed of Trust recorded as Book and
Instrument Number 20141113-0003739, is attached to ECF No. 9 as Exhibit D.

28 ⁴ A true and correct copy of the Notice of Delinquent Assessment (Lien) recorded as Book and
Instrument Number 20130313-0004837, is attached to ECF No. 9 as Exhibit E.

1 against the Property by the HOA Trustee on behalf of the HOA on June 13, 2013.⁵ Public
2 records show that on July 5, 2013, a second Notice of Default and Election to Sell Under
3 Homeowners Association Lien was recorded against the Property by the HOA Trustee on behalf
4 of the HOA.⁶ Public records show that on December 20, 2013, a Notice of Trustee's Sale was
5 recorded against the Property by the HOA Trustee on behalf of the HOA.⁷

6 Pursuant to that Notice of Trustee's Sale, a non-judicial foreclosure sale occurred on
7 February 26, 2014. The HOA Trustee recorded a Trustee's Deed Upon Sale whereby ABS
8 acquired its interest, if any, in the Property for \$20,600.00. The Foreclosure Deed was recorded
9 on March 3, 2014.⁸

10 On September 15, 2015, a Quitclaim Deed from BAS to Jimijack Trust was recorded
11 against the Property.⁹

12 *c. Pending Litigation*

13 On March 17, 2014, ABS filed its Complaint for Quiet Title and Declaratory Relief
14 against BANA and Mendez, among others, in State Court, Case No. A-14-697792-C. [ECF No.
15 3-2]. Fannie Mae intervened as a Defendant on June 4, 2015 by stipulation of the parties and
16 removed the action to United States District Court for the District of Nevada on July 13, 2015
17 [ECF No. 1]. On August 21, 2015, Fannie Mae filed its Answer and Counterclaim, asserting
18 counterclaims against ABS for Declaratory Relief, Quiet Title and Unjust Enrichment. [ECF
19 No.9]. On September 23, 2015, FHFA intervened as a Defendant [ECF No. 17] and filed its
20 Answer and Counterclaim, on September 24, 2015, asserting counterclaims against ABS for

21
22 ⁵ A true and correct copy of the Notice of Default and Election to Sell Under Homeowners
23 Association Lien recorded as Book and Instrument Number 20130613-0001806 is attached to
24 ECF No. 9 as Exhibit F.

25 ⁶ A true and correct copy of the second Notice of Default and Election to Sell Under
26 Homeowners Association Lien recorded as Book and Instrument Number 20130705-0000952 is
27 attached to ECF No. 9 as Exhibit G.

28 ⁷ A true and correct copy of the Notice of Trustee's Sale recorded as Book and Instrument
Number 20131220-0001348, is attached to ECF No. 9 as Exhibit H.

29 ⁸ A true and correct copy of the Trustee's Deed Upon Sale recorded as Book and Instrument
Number 20140303-0003787, is attached to ECF No. 9 as Exhibit I.

30 ⁹ A true and correct copy of the Quitclaim Deed recorded as Book and Instrument Number
201509150002030, is attached hereto as **Exhibit 1**.

1 Quiet Title, Declaratory Relief and Preliminary Injunction. [ECF No. 18].

2 As this Court is aware, there are two other pending and related lawsuits concerning the
3 HOA Sale. The first-filed action, 2:15-cv-00314-RCJ-NLK (the “First Action”), was brought by
4 Mendez against the HOA, the HOA Trustee, ABS, Amir Hujutallah (a purported principal of
5 ABS) and the HOA’s community manager. The latest-filed action, Case No. 2:16-cv-01077-
6 RCJ-NJK (the “Third Action”), was filed by Mendez against Wright, Finlay & Zak, LLP
7 (“WFZ”), Seterus, Fannie Mae and Jimijack Trust. Mendez alleged non-quiet title causes of
8 action against WFZ, Seterus and Fannie Mae, but alleged quiet title against Jimijack Trust.

9 The three actions were reassigned to Judge Robert Jones on July 8, 2016 [ECF No. 53]
10 and, on December 9, 2016 during Calendar Call in matter 2:15-cv-00314, were subsequently
11 consolidated for the purpose of trial [ECF No. 62].

12 **II. THIS COURT SHOULD SUBSTITUTE AND JOIN JIMIJACK TRUST AS THE
13 CURRENT RECORD OWNER OF THE PROPERTY, PURSUANT TO FED. R.
14 CIV. P. 25(c)**

15 Fed. R. Civ. P. 25(c) permits a person to make a motion to substitute party in any case
16 “[i]f an interest is transferred....” In these circumstances, “the action may be continued by or
17 against the original party, unless the court, on motion, orders the transferee to be substituted in
the action or joined with the original party.” As this Court has previously explained:

18 The most significant feature of Rule 25(c) is that it does not require that anything
19 be done after an interest has been transferred. The action may be continued by or
against the original party, and the judgment will be binding on his successor in
interest even though he is not named. An order of joinder is merely a
discretionary determination by the trial court that the transferee’s presence would
facilitate the conduct of litigation.

22 Campbell v. Estate of Kilburn, 2014 U.S. Dist. LEXIS 99463, at *3-4 (D. Nev. July 21, 2014)
23 (citing In re Bernal, 207 F.3d 595, 598 (9th Cir. 2000) (quoting 7C Charles Alan Wright, Arthur
24 R. Miller, & Mary Kay Kane, FEDERAL PRACTICE AND PROCEDURE § 1958 (2d Ed.
25 1986)). In other words, this Court is vested with broad discretion to grant a motion for
26 substitution pursuant to Fed. R. Civ. P. 25(c) if the Court believes that transferee’s presence
27 would facilitate the conduct of litigation. See Luxliner P.L. Exp. Co. v. RDI/Luxliner, Inc., 13
28 F.3d 69, 72 (3rd Cir. 1993) (citing Froning’s, Inc. Johnston Feed Service, Inc., 568 F.2d 108, 110

1 (8th Cir. 1978); 7C WRIGHT & MILLER § 1958 at 557; 3B Moore, MOORE'S FEDERAL
2 PRACTICE § 25.08 at 25–58–25–63 (1993)).

3 Fannie Mae and FHFA submit that good cause exists to substitute and join Jimijack as a
4 Counter-Defendant, as described above, pursuant to Fed. R. Civ. P. 25(c). Jimijack Trust is a
5 party to the Third Action and its predecessor-in-interest, ABS, is involved in the instant action,
6 as well as the First Action. Further, the request to substitute and join Jimijack Trust cannot come
7 as a surprise to Jimijack Trust, nor should be construed to prejudice Jimijack Trust, as the
8 Property was quitclaimed to Jimijack in September 2015, approximately 18 months after ABS
9 initiated quiet title litigation concerning the Property. ABS and Jimijack Trust are represented
10 by the same counsel. Jimijack Trust knew, or at the very minimum had record knowledge, that
11 there was pending litigation concerning title to the Property, by virtue of the Lis Pendens
12 recorded against the Property on behalf of ABS on March 31, 2014 and on behalf of Fannie Mae
13 on September 1, 2015, and should have moved of its own accord to substitute in place of ABS as
14 Plaintiff in the above-identified action.

15 In addition, Jimijack Trust should be joined as a Counter-Defendant with ABS as to
16 Fannie Mae's Unjust Enrichment counterclaim because it currently benefits from any funds and
17 resources expended to preserve the condition and value of the Property, expended from the time
18 that Jimijack Trust obtained its interest in the Property through resolution of the pending
19 litigation. Unlike the quiet title and declaratory relief claims, however, the relevant property
20 interest underlying Fannie Mae's Unjust Enrichment counterclaim is distinct and unrelated to
21 whether the Deed of Trust is deemed extinguished by the HOA Sale or not. To the extent ABS
22 received value pursuant to Seterus' payment of taxes and insurance on the Property after the
23 HOA Sale, Jimijack Trust will now continue to receive such benefit going forward as Seterus
24 continues to pay taxes and insurance. Accordingly, it is appropriate to name both ABS and
25 Jimijack Trust as Counter-Defendants to Fannie Mae's Counterclaim for Unjust Enrichment.

26 **III. CONCLUSION**

27 Based upon the foregoing, FHFA and Fannie Mae respectfully request that the Court
28 order Jimijack Trust to substitute into the case in place of ABS as Counter-Defendant to Fannie

1 Mae's Counterclaims for Quiet Title and Declaratory Relief and FHFA's Counterclaims for
2 Quiet Title, Declaratory Relief and Preliminary Injunction. Further, Fannie Mae requests that
3 Jimijack Trust be joined as a Counter-Defendant with ABS to Fannie Mae's Counterclaim for
4 Unjust Enrichment. Lastly, Fannie Mae and FHFA respectfully request that the case caption is
5 amended accordingly.

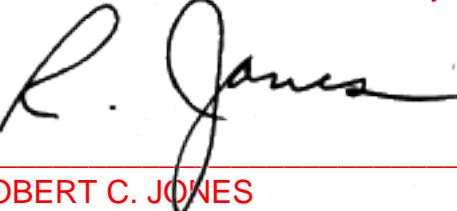
6 DATED this 17th day of January, 2017.

7 **WRIGHT, FINLAY & ZAK, LLP**

9 /s/ Christina V. Miller, Esq.
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14 Attorneys for Federal Housing Finance
Agency

16
17 IT IS SO ORDERED this 11th day of April, 2017.
18
19 
20
21 ROBERT C. JONES
22
23
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25
26
27
28

CERTIFICATE OF SERVICE

Pursuant to Fed. R. Civ. P. 5(b) and Electronic Filing Procedure IV(B), I certify that on the 17th day of January, 2017, a true and correct copy of **FEDERAL NATIONAL MORTGAGE ASSOCIATION'S AND FEDERAL HOUSING FINANCE AGENCY'S JOINT MOTION TO SUBSTITUTE AND JOIN AS COUNTER-DEFENDANT JOEL A. STOKES AND SANDRA F. STOKES AS TRUSTEES OF THE JIMIJACK IRREVOCABLE TRUST, PURSUANT TO FED. R. CIV. P. 25(c)** was transmitted electronically through the Court's e-filing electronic notice system to the attorney(s) associated with this case. If electronic notice is not indicated through the court's e-filing system, then a true and correct paper copy of the foregoing document was delivered via U.S. Mail.

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Leslie Bryan Hart lhart@fclaw.com

John Tennert jtennert@fclaw.com

Notice has been delivered by other means to:

Crossbox

James M. McCord

/s/ Brandon Lopipero
An Employee of Wright, Finlay & Zak, LLP

INDEX OF EXHIBITS

Exhibit No.	Description of Exhibit	Page No.'s
1	Quitclaim Deed, recorded on September 15, 2015, as Book and Instrument Number 201509150002030	4

Exhibit 1

Quitclaim Deed

Exhibit 1

Quitclaim Deed

Exhibit 1

Quitclaim Deed

Inet #: 20150915-0002030
Fees: \$18.00 N/C Fee: \$0.00
RPTT: \$851.70 Ex: #
09/16/2015 02:32:26 PM
Receipt #: 2653618
Requestor:
LINEAR TITLE & CLOSING LTD.
Recorded By: OSA Pgs: 3
DEBBIE CONWAY
CLARK COUNTY RECORDER

APN: 124-29-314-081
Recording requested by and mail
documents and tax statements to:

Name: Joel A. Stokes and Sandra F. Stokes
Address: 5 Summit Walk Trail
City/State/Zip: Henderson, NV 89052

QUITCLAIM DEED

THIS QUITCLAIM DEED, Executed this 11th day of September 2015, by Absolute Business Solutions, Inc. (hereinafter "Grantor(s)"), whose address is 1202 Alfred Avenue, #B, Building F, Yeadon, PA 19050, to Joel A. Stokes and Sandra F. Stokes, as Trustees of the Jimijack Irrevocable Trust (hereinafter "Grantee(s)"), whose address is 5 Summit Walk Trail, Henderson, Nevada 89052.

WITNESSETH, That the said Grantor, for good consideration and for the sum of One Dollar USD (\$1.00) paid by the said Grantee, the receipt whereof is hereby acknowledged, does hereby remise, release and quitclaim unto the said Grantees forever, all the right, title, interest and claim which the said Grantor has in and to the following described parcel of land, and improvements and appurtenances thereto in the County of Clark, State of Nevada, to wit:

Commonly known as:

3416 Casa Alto Avenue, North Las Vegas, Nevada 89031

More particularly described as:

APN: 124-29-314-081

Lot One Hundred Seventy-Three (173) of FIESTA DEL NORTE-UNIT 2, as shown by map thereof on file in Book 110 of Plats, Page 64, in the Office of the County Recorder of Clark County, Nevada.

IN WITNESS WHEREOF, The said first party has signed and sealed these presents the day and year first above written.

Signed, sealed and delivered in presence of:



Grantor

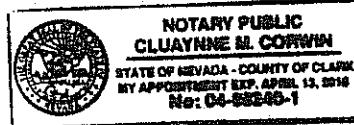
Amir M. Hujjutallah, Officer
Absolute Business Solutions, Inc.

State of Nevada })
County of Clark }) ss

On this 11th day of September 2015, before me, Cluaynne M. Corwin, a notary public in and for the County of Clark, State of Nevada, did personally appear before me the person of Amir M. Hujjutallah, Officer of Absolute Business Solutions, Inc., personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to this Quitclaim Deed; and, acknowledged to me that he executed the same in his capacity, and that by his signature on this instrument did execute the same.

WITNESS my hand and official seal.

Signature: Cluaynne M. Corwin



*Notary Public
Cluaynne M. Corwin
State of Nevada - County of Clark
My Appointment Exp. April 13, 2016
No: 04-88240-1

STATE OF NEVADA
DECLARATION OF VALUE

1. Assessor Parcel Number(s)

- a. 124-29-314-081
 b.
 c.
 d.

2. Type of Property:

- | | |
|--|---|
| a. <input type="checkbox"/> Vacant Land | b. <input checked="" type="checkbox"/> Single Fam. Res. |
| c. <input type="checkbox"/> Condo/Twnhse | d. <input type="checkbox"/> 2-4 Plex |
| e. <input type="checkbox"/> Apt. Bldg | f. <input type="checkbox"/> Comm'l/Ind'l |
| g. <input type="checkbox"/> Agricultural | h. <input type="checkbox"/> Mobile Home |
| Other | |

FOR RECORDERS OPTIONAL USE ONLY
 Book _____ Page: _____
 Date of Recording: _____
 Notes: _____

3.a. Total Value/Sales Price of Property

\$ 1106,977.00

b. Deed in Lieu of Foreclosure Only (value of property) (0)

c. Transfer Tax Value: \$ 1106,977.00

d. Real Property Transfer Tax Due \$.861.70

4. If Exemption Claimed:

- a. Transfer Tax Exemption per NRS 375.090, Section _____
 b. Explain Reason for Exemption: _____

5. Partial Interest: Percentage being transferred: %

The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the parties agree that disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month. Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature Audrey PORTER Capacity: Agent

Signature _____ Capacity: _____

SELLER (GRANTOR) INFORMATION
(REQUIRED)

Print Name: Absolute Business Solutions, Inc.
 Address: 1202 Alfred Avenue #B, Building F
 City: Yeadon
 State: PA Zip: 19050

BUYER (GRANTEE) INFORMATION
(REQUIRED)

Print Name: Trel A. Stokes & Sandra F. Stokes, as Trustees of the Jim Jack Irrevocable Trust
 Address: 5 Summit Walk Trail
 City: Henderson
 State: NV Zip: 89052

COMPANY/PERSON REQUESTING RECORDING (Required if not seller or buyer)

Print Name: Linear Title & Closing LTD.
 Address: 10785 W. Twain Ave., Ste. 110
 City: Las Vegas

Escrow #: NVL-452250-P
 State: NV Zip: 89135

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED